

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHEYENNE GREGGS,

Plaintiff,

-v-

5:12-CV-1853 (NAM/TWD)

**ANDREWS UNIVERSITY; JOHN DOE, Pastor of
Mount Carmel Seventh Day Adventist Church;
NEWTON W. HOILETTE, Vice-President for
Students and Member of the Sexual Harassment
Committee; NANCY J. CARBONELL, Ph.D.,
Counseling, Psychology and Sexual Harassment
Compliance Officer; NIELS-ERIK ANDREASEN,
Andrews University President; DR. GLENDA-MAE
GREENE, Student Services Assistant Vice-
President; SPENCER CARTER, Andrews University
Assistant Dean of Men; DEXTER SADDLER;
PAUL FLYGER; and VINCENT DAVID, Andrews
University Dean of Graduate Students,**

Defendants.

APPEARANCES:

CHEYENNE GREGGS
Plaintiff *pro se*

Hon. Norman A. Mordue, U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Presently before the Court is an Order and Report-Recommendation of United States Magistrate Judge Thérèse Wiley Dancks (Dkt. No. 5). Magistrate Judge Dancks grants plaintiff's motion to proceed *in forma pauperis* and, upon review under 28 U.S.C. § 1915(e)(2)(B)(i)-(ii), recommends that the complaint be dismissed with leave to replead, except as to defendants Doe, Saddler, and Flyger, as to whom she recommends that the complaint be dismissed with prejudice.

Plaintiff submits a partial objection (Dkt. No. 6). Pursuant to 28 U.S.C. § 636(b)(1)(C),

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this Court reviews *de novo* those parts of a report and recommendation to which plaintiff specifically objects. The Court adopts Magistrate Judge Dancks' summary of the facts and law.

Plaintiff objects to the dismissal with prejudice of his claims against Saddler and Flyger. He otherwise does not object to Magistrate Judge Dancks's recommendations. The complaint appears to allege, *inter alia*, that in 1996, in retaliation for plaintiff's threat to expose homosexual activity at defendant university, the university recruited Flyger, and possibly also Saddler, both students, to manufacture a rape charge against plaintiff, and that Saddler and Flyger were rewarded by being permitted to remain at the university, whereas plaintiff was dismissed from the school. Plaintiff faces a number of hurdles in pursuing this action, the most obvious of which is the statute of limitations. The Court cannot, however, rule out any possibility that an amended complaint would succeed in stating a claim, including a claim against Saddler and Flyger under 42 U.S.C. § 1983 based on their acting in concert with the university (if the university was acting under color of state law). Accordingly, the Court dismisses the claims against Saddler and Flyger without prejudice.

It is therefore

ORDERED that the Order and Report-Recommendation of United States Magistrate Judge Thérèse Wiley Dancks (Dkt. No. 5) is adopted except insofar as it recommends dismissal of the claims against Saddler and Flyger with prejudice; and it is further

ORDERED that the complaint (Dkt. No. 1) is dismissed against defendant Doe with prejudice and against all other defendants with leave to amend; and it is further

ORDERED that plaintiff shall file any amended complaint in this action on or before August 1, 2013, or the action will automatically be dismissed; and it is further

ORDERED that any amended complaint filed in this action should include factual allegations describing the role of each named defendant sufficiently to allow the Court to assess whether a plausible claim has been stated against them; and the amended complaint should be a wholly integrated and complete pleading, with separately numbered allegations, that does not rely upon or incorporate by reference pleadings previously filed in the action; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

Date: June 21, 2013
Syracuse, New York


Honorable Norman A. Mordue
U.S. District Judge